



**New York State
Office of
Children & Family
Services**

www.ocfs.state.ny.us

July 9, 2010

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: DA 10-1045, 75 FR 32692 (June 9, 2010), 75 FR 32699 (June 9, 2010), and proposed Eligible Services List for Funding Year 2011

David A. Paterson
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park

52 Washington Street
Rensselaer, NY
12144-2796

Dear Ms. Dortch:

This responds to the Public Notice DA 10-1045, released by the Federal Communications Commission on June 9, 2010, announcing comment deadlines for the *E-rate Broadband NPRM* released by the Commission on May 20, 2010,¹ for the *ESL Order and FNPRM* released by the Commission on December 2, 2009,² and for a draft Eligible Services List (ESL) attached to the Public Notice.

The New York State Office of Children and Family Services (OCFS) writes to provide information, as well as to express its concern regarding possible changes that could negatively impact its provision of services to support the education and technology needs of students and teachers in OCFS schools. OCFS notes that on November 19, 2009 it provided comments on some of these issues, pursuant to NPB Public Notice # 15, concerning GN Docket Nos. 09-47, 09-51, 09-137; CC Docket No. 02-6; and WC Docket No. 05-19 5.

The following comments are described according to the headings of the sections and subsections under which they appear in the Federal Register, and are in the order in which they appear therein.

E-rate Broadband NPRM (75 FR 32699):

Streamlining the Application Process



An Equal Opportunity Employer

¹ *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Notice of Proposed Rulemaking, FCC 10-83 (*E-rate Broadband NPRM*). This was published June 9, 2010 at 75 FR 32699.

² *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order and Further Notice of Proposed Rulemaking, FCC 09-105. (*ESL Order and FNPRM*). This was published June 9, 2010 at 75 FR 32692.

Competitive Bidding Process: This proposes to streamline the application process by eliminating the Form 470 filing requirement on Priority 1 services for applicants subject to public procurement requirements, defined as meaning "...state or local procurement regulations established by another governmental body..." Since New York has procurement rules governing purchases by public entities, the proposed Form 470 exemption would presumably apply to OCFS schools. However, there are some potential issues:

- Who will decide if a specific applicant is exempt from filing a Form 470? Will it be the applicant itself (subject to second guessing by USAC), or will USAC take it upon itself to review the adequacy of each state's or territory's procurement regulations, and identify all exempt classes of applicants in each?
- Typical state procurement rules have different provisions based on purchase levels and on classes of products and services. If, for example, state regulations require competitive bids only for purchases exceeding \$25,000, would a school district still be exempt from filing a Form 470 for lesser amounts of service? If so, why impose a Form 470 requirement on a private school seeking the same level of service?
- How would state master contracts be treated? Would state purchasing agencies still be required to file a Form 470 if its rules had not been "established by another governmental body?" Would all applicants — including private schools in some states — be exempt for the Priority 1 Form 470 requirements if all their purchases were based on state master contracts? Would the rules differ depending upon whether a given state contract was single-sourced, competitively bid, or was part of a multi-vendor award?
- Will some service providers be disadvantaged by not having access to an applicant's service requirements and contact information currently available for download from the SLD Web site?
- Concerning Initial Review, Selective Reviews, Special Compliance Reviews, appeal reviews, and audits, for applicants with Form 470 exemptions is the FCC willing to turn over all procurement enforcement to the states, or will USAC be responsible for assuring that all state procurement rules have been followed? If USAC is charged with the responsibility of overseeing adherence to all and any state procurement requirements, E-rate rules and procedures could quickly become significantly more complex than they are today. Instead, the filing of the existing Form 470 could be made easier by simplifying the form.

Providing Greater Flexibility To Select Broadband Services

Wireless Service Outside of School: All OCFS schools are residential. Implementation of this proposal could allow OCFS students to continue their learning after school hours by being able to access wireless internet connectivity from their living units.

Expanded Access to Low-Cost Fiber: This may allow OCFS to achieve lower costs by leasing dark fiber from the New York State Office for Technology, which is not a telecommunications carrier.

Expanding Access for Residential Schools That Serve Unique Populations: Students who attend OCFS schools, particularly those in secure facilities, do not have the ability to access the Internet at home or at a public library. This proposal would be of benefit to OCFS if it would permit E-rate funding for educational activities that are outside of the classroom, such as in living units

Targeting Support for Broadband Services: While broadband access can have significant benefits, telephone services (local, long distance and wireless) provide critical communications links in rural areas such as those that contain most of OCFS's schools. These telephone services provide enhanced communication between facility directors, teachers, transportation and advanced safety and security initiatives (police, fire and rescue), enhanced access for teachers and administrators for emergencies while in field trips, and educational administration (e.g., securing transcripts, setting up meetings of a student's Committee on Special Education, and communicating with parents concerning educational, health, and transitional activities). Loss of the discount for basic telephone services would not level the playing field in poor or rural areas, but would disadvantage students in those areas. OCFS opposes lowering of the priority of voice telecommunications services.

Expanding the Reach of Broadband to the Classroom

Predictable Internal Connections Funding for More Schools and Libraries: While OCFS supports the elimination of the 2 in 5 rule, since such elimination would allow more flexibility in refreshing equipment, OCFS opposes the proposed changes that would divert funds from the neediest districts.

Indexing the Annual Funding Cap to Inflation: This will benefit all participants since the purchasing power of E-rate funding will not be eroded by inflation. However, OCFS supports using 1998 (the program's first year), rather than 2010, as the baseline. This will help support the program at the same effective level as at its inception.

Creating a Process for Disposal of Obsolete Equipment

Process for Disposal of Obsolete Equipment: OCFS supports this for the reasons stated in the NPRM.

ESL Order and FNPRM (75 FR 32692):

Services

Firewall: OCFS supports making separately-priced firewall services eligible for funding. Such services are crucial to delivering safe and reliable internet access to OCFS schools.

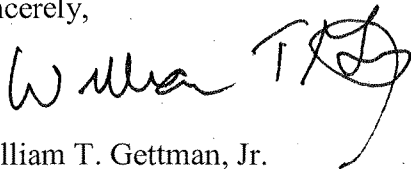
Anti-Virus/Anti-Spam Software: OCFS supports making separately-priced anti-virus/anti-spam software eligible for funding. Such services are crucial to delivering safe and reliable internet access to OCFS schools.

Draft Eligible Services List (ESL) for Funding Year 2011 attached to Public Notice DA 10-1045:

To the extent that OCFS has provided comments, either in this response or in its November 19, 2009 comments pursuant to NPB Public Notice # 15, with respect to services on this list, it hereby incorporates those comments with respect to the Draft ESL for Funding Year 2011.

Should you have any additional questions or concerns, please contact Dee Alexander, OCFS Federal Liaison, at (518) 473-1682.

Sincerely,



William T. Gettman, Jr.
Executive Deputy Commissioner

cc:

Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554

Regina Brown, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A445, Washington, D.C. 20554

Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-B521, Washington, D.C. 20554